IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 164 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORE CHANDANJI PACHANJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 164 of 1992

MR PM THAKKAR for Petitioner No. 1-4

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/01/2003

ORAL JUDGEMENT

#. All the four appellants-accused have filed this joint appeal against the judgment and order of conviction and

sentence dated 7.2.1992 passed by the learned Sessions Judge and Special Judge (Atrocities), Mehsana in Sessions Case No.3/91.

#. It is the case of the prosecution that complainant-Babubhai Pannabhai was serving as Watchman of nursery. Three ladies entered the nursery and quarreled with him on 31.10.1990 at about 3.30 p.m. Out of them two ran away and the third lady-Pamiben-accused No.4 wielded sickle and caused injury on the nose of the complainant. Thereafter, three other male persons, who are accused Nos.1 to 3 came there and caused injuries to him with deadly weapons by insulting him with his caste stating that "sala dheda phati gao che".

#. Before the learned Judge, complainant-Babubhai himself examined and in his support two other so-called eye witnesses Akbarbhai PW-2 and Iswarbhai Ex.23 were examined, but they have not supported the prosecution case, therefore, they were treated as hostile witnesses. The learned Judge relying upon the sole testimony of complainant found all the appellants-accused guilty for the offences under Section 3(1)(10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for sort "Atrocities Act") as well as for the offences under Section 332 read with Section 114 IPC and sentenced them to suffer RI for six months for all the offences. However, substantive sentences were ordered to run concurrently.

#. Learned counsel for the appellant has taken me through the evidence of complainant-Babubhai. He submitted that having found all the three ladies alone, he tried to play mischief with them, therefore, two lady accused have run away from the nursery and informed about the mischief to other male accused. However, third lady, Pamiben-accused No.4 could not escape. When the three other mail accused came, the complainant after realizing that he will be in difficulty he filed the false case against all the accused for the offence under Section 3(1)(10) of the Atrocities Act. He submitted that they also belong to OBC community. In that view of the matter, the evidence of the complainant cannot be relied upon where he had stated that the accused had insulted him with caste by uttering such words "sala dheda phati gao che". Having carefully gone through the evidence, I am of the considered opinion that the evidence of the complainant could not be relied upon at least on the point of insulting with the caste, therefore, all the accused are entitled for benefit of doubt for the offence under Section 3(1)(10) of the Atrocities Act when two

other independent eye witnesses have not supported the prosecution case.

#. However, his evidence can be relied upon when he has stated that all the four accused have beaten him with the weapons in their hands his version is corroborated by the medical evidence. In that view of the matter, the order of conviction passed by the learned Judge convicting the accused for the offence under Section 332 read with Section 114 IPC has to be confirmed. However, learned counsel for the appellants-accused submitted that in the instant case offence in question took place before more than 12 years and that the appellants-accused except the accused No.4 have initially remained in jail as under-trial prisoner for 7 days and after conviction order dated 7.2.1992 all the accused had remained in jail till 21.2.1992. Therefore, the substantive sentence of RI for six months for the offence under Section 332 read with Section 114 IPC be reduced to the sentence as undergone. Having regard to the peculiar facts and circumstances of the case, learned APP Shri Dave appearing for the respondent-State could not object to this.

#. In view of the above discussion, this appeal is partly allowed. The impugned judgment and order of conviction and sentence passed by the learned Judge convicting the appellant-accused for the offence under section 3(1)(10) of the Atrocities Act is hereby quashed and set aside. Fine if paid on that account be refunded to the appellants.

#. The order of conviction passed by the learned Judge convicting the appellants-accused under section 332 read with Section 114 IPC is hereby confirmed. However, the substantive sentence of six months RI is reduced to the sentence as already undergone. However, order of fine of Rs.200/= is maintained. The appellants are on bail. Their bail bonds stand cancelled. The appeal is partly allowed to the aforesaid extent only.

(B.J.Shethna, J.)

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